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SUBJECT: AMINA LAWAL: OUTCOMES FOR SHARI'A IN NIGERIA

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Summary

1. (SBU) The overturning on appeal September 25 of Amina Lawal's Shari'a court adultery verdict will have different, though minor, effects on the various Nigerians supporting the application of Shari'a in criminal law. Opportunist Muslim politicians and Islamist demagogues are still using Shari'a to gain support from Nigerians fed up with Nigeria's dysfunctional legal, political and economic systems, and as a wedge issue against the GON and northern Nigeria's Muslim traditional rulers. Their playing field is the many non-political Nigerian Muslims who support Shari'a out of religious and regional pride, often truly believing it is inherently a better system of law.

2. (SBU) As a judicious blend of religious and secular arguments, the Katsina State Shari'a Appeals Court's decision (reftel) forces supporters of Shari'a to pay more attention to the technical merits of cases. It will also force Rule of Law advocates to consider implementation of Shari'a-based criminal law on an equal footing with implementation of secular law in Nigeria. The most recent cases Shari'a courts have brought to conviction and stoning sentences have been child molesting/murder, not adultery. And the fact that Shari'a has been used to judge the poor and weak, not justice extended to rich and powerful criminals which advocates of Shari'a claimed as a goal, may come back to haunt the demagogues who have pushed it. End Summary.

Background

3. (SBU) Nigeria's Ministry of Justice sets and enforces standards for judges for both Shari'a and secular courts at the state level throughout the country, but not the local, customary or traditional courts that are used as the courts of first resort. The result is that many judges at the local level are undertrained, incompetent or corrupted by group pressure and financial incentives. The Amina Lawal conviction in the Shari'a lower court, and the Shari'a Appeals Court's decision overturning it, showed that Shari'a courts are no different in that respect.

4. (U) Although many Nigerians are interested in Shari'a, both for and against, they were not much interested in the Amina Lawal case despite the strong international attention to it. Those who were interested were most eager for the issue to reach the federal level, where both the constitutionality of using criminal aspects of Shari'a and of the many variations of Shari'a implementation in Nigeria could be considered. That did not happen.

5. (U) Twelve of Nigeria's 36 states have adopted variations of Shari'a-based criminal law. They differ on whether Muslims are required to use the Shari'a courts or have a choice, and also on punishments, with some states allowing convicts the choice of a fine or jail time in place of caning or flogging. Non-Muslims are not required in any state to submit to Shari'a jurisdiction, but in some states they can volunteer (usually to avoid jail when they believe a Shari'a statute either makes conviction more difficult or penalties less harsh). While a national committee has been established to reconcile inconsistencies and create some level of uniformity among the states, little progress has been made.

A Little Bad News for the Islamists

16. (SBU) The majorities that voted for politicians backing Shari'a-based criminal law believed that Shari'a courts would be fairer and quicker, and, most of all, would apply justice equally to rich and poor -- the driving force behind the call for Shari'a in the North. But local Shari'a court Kadis are proving to be just as inept and corrupt as secular court judges, and Shari'a court prosecutions have not taken on the high and mighty.

17. (U) Ms. Lawal is a case in point. She was poor, had no lawyer, and was not sufficiently versed in the law even to know that under Shari'a no prosecution for adultery could be made unless there were four simultaneous eyewitnesses to the crime or the accused confessed. The political optics of the case were so bad that the Katsina state prosecutor said publicly that he would not seek a new trial if the Appeals court voided the conviction.

18. (SBU) If the Shari'a courts are still not seeking to stone the affluent, however, it does appear they will be finding less pitiable targets for prosecution. The most recent stoning sentence, September 25, was for the rape and murder of three young boys.

19. (SBU) Thus far Shari'a has been a dud for the radical Islamists, who still lack a strong following in the North. In formal politics, they have not been able to use it to overturn the traditional order in northern Nigeria. Christian President Obasanjo was not forced to take on Nigeria's Muslims over Shari'a, nor start a potentially politically disastrous fight with the twelve governors supporting it, some from his own party. Having lost some of the divisiveness wind from their political sails, some Islamists may change tack and look for other ways to gain power in Nigerian society. Fomenting Muslim-Christian violence may be one, terrorism could be another, and this Embassy is working actively against both.

The Governors Supporting Shari'a

10. (SBU) The call for Shari'a in Northern Nigeria came from a populace disenchanted with secular justice, but the actual decision for Shari'a implementation was very political. With a very low voter turnout and high levels of fraud in the 1999 elections, many governors' positions were tenuous coming up to elections in 2003. The call for Shari'a was a quick and easy decision to get some popular support from the Muslim majority in these twelve states in anticipation of the elections. Shari'a also afforded governors a chance to show independence from the central government and demonstrate their control over events in each of their states.

11. (SBU) While the establishment of Shari'a courts won praise for the governors at first, many of them hoped never to actually authorize the use of "hudud" corporal punishments. Only one death sentence has been carried out in the entire North in two years. Numerous sentences of amputation have been pending governors' signatures for months, and in a few cases for more than a year. Moreover, none of the states have criminalized apostasy. The governors are opportunistic politicians who happen to be Muslims, not Islamist demagogues who have gotten into politics.

12. (SBU) Amina Lawal's case was a minor win for those governors. As the case did not reach the federal level, their implementation of Shari'a still has not been challenged. But the politics of Shari'a above, especially if disenchantment grows that it is not bringing justice, could turn the opportunists away from pushing Shari'a as the answer.

The Opponents of Shari'a

13. (SBU) Opponents of Shari'a still fear it as a symbol to re-assert Hausa/Fulani dominance over first the north and then the rest of Nigeria, and as an assault on human rights and civil liberties. Those opponents had little to cheer from Lawal's conviction being overturned. The Katsina State Shari'a Appeals Court's decision held the lower Shari'a court to standards similar to a secular court, and in the process showed that Shari'a courts can and should be functional. Moreover, as prosecutors move away from cases where the defendant could be a poster child against Shari'a, its opponents will gain less attention from all but their own

communities.

14. (SBU) In the last two years the focus of Muslim-Christian violence has shifted away from the 12 states with Shari'a-based criminal law. Although Muslim-Christian tensions seem to be moving away some from the city streets back toward college campuses of late, in what many here see as a normal cycle, both Muslim and Christian communities are still tinderboxes of unemployed youth. Christian extremists can set fire to the streets as easily as their Muslim counterparts, and the Embassy has come out in public against violence from any quarter.

Outcomes for other Shari'a Cases

15. (SBU) While Amina Lawal's case only sets a precedent in Katsina State, it has changed the way Shari'a cases are prosecuted in all of the states. Muslim legal professionals working on the implementation of Shari'a in Nigeria were somewhat emboldened; one Muslim human rights activist lawyer told us at an Embassy Iftar recently that he and many colleagues are devoting even more of their time than before to putting in place the procedures necessary to make Shari'a-based criminal law work in Nigeria.

16. (SBU) There are currently more than fifty cases in northern Nigeria with pending hudud sentences of amputation or death by stoning. The majority of the cases are heading to some level of appeal, although probably no further than the Shari'a Appeals Court in their state for decisions similar to the Lawal case. Prosecutors are already tending to seek more clear-cut capital offense cases, usually with confessions, of child molesting, murder and rape. Many borderline cases will likely be resolved through giving the convicted persons a choice of jail time or a fine instead of hudud punishments, or using the Shari'a "Ihizari" process of allowing confession to a lesser crime with sentences of only caning or flogging.

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